

Message Text

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ACTION EA-09

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R 300128Z JUL 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8145

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC HONOLULU

CINCPACFLT

CINCPACAF

CINCPACREPPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 11222

CINCPAC ALSO FOR POLAD

FROM USDEL 165

E. O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: LABOR

1. SUMMARY: PROVIDES RECAP OF VARIOUS LABOR ARTICLE PROVISIONS ON WHICH US AND RP LABOR PANELS HAVE AGREED TO DATE AD REFERENDUM. PARENTHESES WITHIN QUOTES REFLECT RESPECTIVE US AND RP DIFFERING POSITIONS ON EACH PROVISION. END SUMMARY.

2. AS REPORTED IN RECENT DAILY SUMMARIES, US-RP LABOR PANEL HAS EXCHANGED AND TABLED RESPECTIVE POSITIONS ON LABOR ARTICLE SUBJECTS. US POSITIONS BASED ON AUTHORIZATION AND GUIDANCE CONTAINED IN STATE 180869 IN RESPONSE TO USDEL 122. AS OF CLOSE BUSINESS 28 JULY , US AND RP PANEL SPOKESMEN HAVE INITIALED FIVE PROVISIONS AD REFERENDUM REFLECTING RESPECTIVE AGREED AND DISAGREED POSITIONS. PURPOSE
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SAME AS IN ALL PANELS--TO DELINEATE AND FOCUS ON AREAS

OF AGREEMENT AND DIFFERENCE. FOLLOWING ARE PERTINENT ASPECTS OF FIVE INITIALED PROVISIONS:

A. INTRODUCTORY PARAGRAPH. TWO OPPOSITE VIEWS.

US TEXT SAME AS FIRST QUOTED PARA USDEL 122. RP TEXT:

QUOTE: PHILIPPINE LABOR AND SOCIAL LAWS, RULES AND REGULATIONS, AS MODIFIED BY THE PROVISIONS OF THIS ARTICLE, SHALL GOVERN EMPLOYER-EMPLOYEE RELATIONS IN THE FACILITIES. END QUOTE.

COMMENT: THIS IS THE KEY UNRESOLVED ISSUE ON LABOR. AS THE RP TEXT MAKES OBVIOUS, INCIONG REMAINS STEADFAST WHEN IT COMES TO PUTTING PEN TO PAPER. HOWEVER, THERE IS POSSIBILITY OF SOME MOVEMENT BY PHIL SIDE TOWARD OUR POSITION. END COMMENT.

B. RECRUITMENT. USING QUOTED PARA 3, USDEL 122, REGARDING CHARGES FOR EMPLOYEE CANDIDATE REFERRAL SERVICES. US QUOTE: SUCH CHARGES WILL BE WAIVED FOR THE U.S. FACILITIES. END QUOTE; RP QUOTE: THE FACILITIES SHALL PAY THE CHARGES NORMALLY LEVIED ON PRIVATE EMPLOYERS IN THE PHILIPPINES. END QUOTE. ADDITIONALLY, RP REQUIRES QUARTERLY REPORT OF EMPLOYEES HIRED DIRECTLY (OUTSIDE PUBLIC EMPLOYMENT OFFICE CHANNEL) UNDER FIRST SENTENCE USF EXEMPTION CLAUSE; WANTS TWO WEEKS FOR LABOR DEPT EMPLOYMENT OFFICE TO REFER CANDIDATES BEFORE FACILITIES CAN RECRUIT DIRECTLY, INSTEAD OF US PROPOSED ONE WEEK.

COMMENT: (1) WE VIEW LAST TWO REQUESTS AS MINOR AND REASONABLE, ALTHOUGH REQUIREMENT FOR A REPORT IN THIS INTERNATIONAL AGREEMENT SEEMS INAPPROPRIATE. (2) ON REFERRAL SERVICE CHARGES: NONE NOW LEVIED BY DEPT LABOR IN PRIVATE SECTOR, CHARGE TO BE INITIATED IN ABOUT A YEAR, RATE NOT YET SPECIFIED. WE FEEL SHOULD AVOID COMMITMENT NOW TO AN UNSPECIFIED AMOUNT, AS WELL AS PRESS FOR USF EXEMPTION AS SPECIALLY RECOGNIZED EMPLOYMENT REGIME. WE RECOGNIZE, HOWEVER, PROPOSED CHARGE FOR SERVICE CONSISTENT WITH SERVICE CHARGES BEING PROPOSED BY PHILS IN OTHER ARTICLES OF THIS AGREEMENT. END COMMENT.
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C. SEVERANCE PAY.

(1) RP INITIATED. US POSITION: NOT NEEDED, AS BLA AND CBA COVER. USING BLA PROVISIONS TO COUNTER RP INSISTENCE ON SEVERANCE PAY PROVISIONS IN THIS AGREEMENT, US SIDE DRAFTED THIS POSITION: QUOTE: EXCEPT WHEN SEPARATION IS FOR CAUSE, SEVERANCE PAY BENEFITS SHALL

BE GRANTED TO EMPLOYEES WHOSE EMPLOYMENT IS TERMINATED INVOLUNTARILY, INCLUDING TERMINATION BY REDUCTION IN FORCE CAUSED BY CLOSURE, DISESTABLISHMENT OR DEACTIVATION OF A FUNCTION, ACTIVITY, COMMAND OR FACILITY. FOR PURPOSES OF COMPUTING SEVERANCE PAY, THE BASIS SHALL BE THE EMPLOYEE'S TOTAL OR AGGREGATE SERVICE WITH THE UNITED STATES ARMED FORCES IN THE PHILIPPINES, LESS PERIODS OF SERVICE FOR WHICH HE HAD ALREADY BEEN PAID SEVERANCE PAY. END QUOTE.

(2) RP WANTS SEVERANCE PAY COMPUTATION TO INCLUDE ALL OF EMPLOYEE'S SERVICE WITH ANY DEPARTMENT OF U.S. GOVERNMENT IN OR OUTSIDE PHILIPPINES. COMMENT: USF SHOULD CONTINUE PRESENT BLA AND CBA PROVISIONS PER QUOTATION ABOVE, NOT ASSUME SERVICE OBLIGATION OF OTHER USG DEPARTMENTS. PROPOSAL TOO OPEN ENDED, DIFFICULT TO VERIFY OTHER SERVICE, AFFECTS OTHER LENGTH OF SERVICE BENEFITS.

(3) RP WANTS TO INCREASE SEVERANCE PAY RATE BY TEN PERCENT TO AN AMOUNT NOT LESS THAN ONE MONTH'S PAY FOR EACH YEAR OF SERVICE. COMMENT: USF PRESENT RATE OF 90 PERCENT OF ONE MONTH'S PAY IS MORE THAN ADEQUATE. THIS RATE BASED ON PREVAILING PRACTICE AMONG SPECIFIED PRIVATE INDUSTRIES/COMPANIES REGULARLY SURVEYED, AND AGREED TO WITH UNION IN RECENT CBA.

(4) RP WANTS ADDED CLAUSE, ASSURING THAT ADVANCE NOTICE PERIOD GIVEN EMPLOYEES PRIOR TO SEPARATION WILL BE INCLUDED WHEN COMPUTING SEVERANCE PAY. COMMENT: CLAUSE UNNECESSARY AS ALREADY A PRACTICE CONFORMING WITH CBA PROVISION. HOWEVER, FEEL COULD CONCEDE THIS ADDED CLAUSE TO ABOVE QUOTATION. END COMMENT.

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INFO OCT-01 ISO-00 PM-04 NSC-05 SP-02 SS-15 L-03 CIAE-00

INR-07 NSAE-00 OMB-01 ACDA-07 SIL-01 LAB-04 /059 W

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R 300128Z JUL 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8146

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JCS WASHDC
CINCPAC
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CINCPACFLT
CINCPACREPHIL SUBIC
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C O N F I D E N T I A L SECTION 2 OF 2 MANILA 11222

D. PAYROLL DEDUCTIONS. USING QUOTED PARA 5, USDEL 122, AS MODIFIED BY STATE 180869, WE TABLED AUTHORIZED TEXT, LESS DEDUCTIONS ENTITLED MEDICARE AND EMPLOYEE COMPENSATION. FELT IMPLICATIONS OF THESE TWO PROGRAMS REQUIRE MORE STUDY BY U.S. SIDE, AND MAY WARRANT AVOIDANCE.

(1) FOLLOWING TEXT INITIALED BY U.S. AND RP LABOR PANEL SPOKESMEN AS REFLECTING RESPECTIVE POSITIONS:
QUOTE: THE UNITED STATES FACILITIES COMMANDER SHALL, (US: FOR NON-UNITED STATES CITIZEN DIRECT HIRE EMPLOYEES,) EFFECT (US: THE FOLLOWING) PAYROLL DEDUCTIONS REQUIRED BY PHILIPPINE LAWS, RULES AND REGULATIONS (RP: INCLUDING) INCOME TAX; SOCIAL SECURITY SYSTEM PREMIUMS; PAYMENTS FOR HOUSING, SALARY AND/OR EDUCATIONAL LOANS; (RP: MEDICARE PREMIUM AND EMPLOYEE COMPENSATION PREMIUM) AND UNION DUES. EXCEPT FOR UNION DUES WHICH SHALL BE REMITTED DIRECTLY TO THE RECOGNIZED COLLECTIVE BARGAINING ORGANIZATION, SUCH DEDUCTIONS WILL BE REMITTED TO THE APPROPRIATE PHILIPPINE GOVERNMENT AGENCY. END QUOTE.

(2) NOTE THAT RP SIDE WANTS DEDUCTIONS MADE FOR ALL
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RPT ALL ITEMS REQUIRED OF PRIVATE SECTOR EMPLOYERS BY PHIL LAWS, RULES AND REGULATIONS (PRESENT AND FUTURE) INCLUDING MEDICARE AND EMPLOYEE COMPENSATION PREMIUMS. WE INTEND TO REQUIRE STIPULATION OF DEDUCTIONS AGREED TO.

(3) REGARDING UNION DUES AND AGENCY FEES, WE TABLED "UNION DUES" ALONE, AND RP SIDE HAS NOT YET COME BACK TO AGENCY FEE SUBJECT SINCE INITIALLING OFF ON ABOVE QUOTED JOINT POSITION TEXT.

(4) REGARDING MEDICARE AND EMPLOYEE COMPENSATION, WE NOW OF OPINION SHOULD RESIST USF PARTICIPATION IN THESE RP PROGRAMS DESCRIBED INITIALLY IN PARA 3E, USDEL 108. RATHER THAN SIMPLE PAYROLL DEDUCTIONS, THESE PROGRAMS INVOLVE COMPREHENSIVE ADMINISTRATIVE AND REGULATORY PARTICIPATION BY EMPLOYER AND ULTIMATE DISPUTED CLAIM SETTLEMENT IN COURTS. FOR PURPOSES OF THESE PROGRAMS

WE WOULD BE UNDER PHIL LAW.

(A) APPLYING MEDICARE WOULD REQUIRE EMPLOYEE DEDUCTION EQUAL TO EMPLOYERS', APPROXIMATELY 50 CENTS/MONTH EACH. CURRENTLY, USF SEPARATE MEDICAL INSURANCE POLICY COSTS ARE SLIGHTLY LESS. OUR EMPLOYER COST WOULD RISE SOME IF PRESENT POLICY EXPANDED TO COVER EMPLOYEES' DEPENDENTS (UNDER PREVAILING PRACTICE). HOWEVER, THIS ADDITION WOULD BE OFFSET BY NEED TO RETAIN SOME SUPPLEMENTAL MEDICAL COVERAGE (PREVAILING PRACTICE) ON TOP OF MEDICARE.

(B) FOR EMPLOYEE (WORKMEN'S) COMPENSATION, TWO-THIRDS OF WORKFORCE (APPROPRIATED FUNDS) WOULD RECEIVE CONSIDERABLY LESS BENEFITS THAN NOW ACCORDED UNDER U.S. FECA PROGRAM. LOCAL COMMAND COST WOULD BE NEW AND APPROXIMATE ONE PERCENT OF PAYROLL, EMPLOYER CONTRIBUTING ONLY. WOULD NEED PROVISION IN THIS AGREEMENT (AS OVERRIDING TREATY) TO SPECIFICALLY EXCLUDE PHIL EMPLOYEES FROM GOVERNING US FECA LAW. WE HAVE ASCERTAINED THAT EARLIER OFFICIAL POSITION OF UNION TO RETAIN THIS COVERAGE STILL VALID. BOTH ABOVE RP PROGRAMS MEAN SUBSTANTIAL SUMS TO RP AGENCIES. ANTICIPATE CONSIDERABLE PRESSURE BY PHILS TO PARTICIPATE.

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E. RESOLUTION OF DISPUTES. COMPLETE AGREED UPON SINGLE-TEXT PARAGRAPH FOLLOWS, AS IT DIFFERS CONSIDERABLY FROM PARA 4, USDEL 122, WHICH WAS TABLED EARLIER. QUOTE: DISPUTES ARISING FROM OR AFFECTING EMPLOYER-EMPLOYEE RELATIONS IN THE FACILITIES WHICH ARE NOT SETTLED BY THE PARTIES THEMSELVES SHALL BE REFERRED TO THE PHILIPPINE BASE COMMANDER AND THE US FACILITIES COMMANDER FOR JUST, SPEEDY AND FINAL JOINT RESOLUTION. THE DECISION OF THE TWO COMMANDERS SHALL BE FINAL AND BINDING ON THE TWO PARTIES. IF NO DECISION IS REACHED WITHIN 20 WORKING DAYS, THE TWO COMMANDERS SHALL REFER THE CASE TO THE JOINT COMMITTEE (US: ESTABLISHED UNDER THE PROVISIONS OF ARTICLE III OF THE BLA) FOR FINAL DECISION OR DISPOSITION. PARAGRAPH. ORDINARY GRIEVANCES, DISCIPLINARY ACTIONS IMPOSING A PENALTY OF LESS THAN FIVE WORK DAYS SUSPENSION, AND MATTERS FOR TECHNICAL REVIEW SHALL BE RESOLVED IN ACCORDANCE WITH THE COLLECTIVE BARGAINING AGREEMENTS IN EFFECT AT THE TIME THE DISPUTE ARISES. (US: DISAGREEMENTS REGARDING THE INTERPRETATION OF TECHNICAL SURVEY FINDINGS ON WAGES AND FRINGE BENEFITS WILL BE RESOLVED BY THE PROCEDURE DESCRIBED IN THE BLA)(RP: WAGES AND FRINGE BENEFITS SHALL BE DETERMINED IN ACCORDANCE WITH THE LABOR CODE OF THE PHILIPPINES.) END QUOTE.

COMMENT: IN THE FIRST PARAGRAPH WE SEE NO ESSENTIAL CHANGE FROM USDEL 122, EXCEPT FOR IMPOSITION OF 20 WORKING DAY LIMIT ON COMMANDERS, WHICH WE THINK IS NEEDED. THE SENTENCE BEGINNING "ORDINARY GRIEVANCES..." WAS FELT BY BOTH SIDES TO BE NEEDED TO KEEP MATTERS INAPPROPRIATE FOR INTER-GOVERNMENTAL CONSIDERATION IN PROPER CHANNELS. HOWEVER, A SERIOUS UNRESOLVED PROBLEM REMAINS: THE RP POSITION THAT LABOR CODE PROCEDURES WILL BE USED TO SET WAGES--IT MEANS COLLECTIVE BARGAINING OF WAGES WITH BINDING ARBITRATION BY DEPARTMENT OF LABOR IF OUR DIFFERENCES WITH UNION ON THE MATTER ARE NOT RESOLVED. WE HAVE NO RPT NO INCLINATION TO FALL OFF BLA POSITION CONTAINED IN AGREED MINUTES TO ARTICLE I, PARA 2 ON TECHNICAL SURVEYS CONDUCTED BY US FORCES.

3. ACTION REQUESTED: (1) WASHINGTON APPROVAL OF NEW USDEL
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TEXT FOR RESOLUTION OF DISPUTES PARAGRAPH; (2) YOUR VIEW
AND COMMENTS ON ANY OR ALL OTHER ITEMS.
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